## REMARKS

This responds to the Final Office Action mailed on January 23, 2009.

No claims are amended, no claims are canceled, and no claims are added; as a result, claims 1-38 are now pending and subject to examination in this application.

### § *103 Rejection of the Claims*

Claims 1-38 were rejected under 35 U.S.C. § 103(a) as being obvious over Slater (U.S. Patent No. 6,615,190) in view of Carroll et al. (U.S. Publication No. 2002/0023026; hereinafter "Carroll").

Claims 14-16 and 29-31 were rejected under 35 U.S.C. § 103(a) as being obvious over Slater in view of Carroll and Armes (U.S. Publication No. 2001/0034720).

The Applicant respectfully traverses these rejections. Neither Slater nor Carroll discloses a gift card, much less an interest bearing gift card as recited in the claims.

The Final Office Action states that the recited term "gift" is not taken to positively require any particular limitation.[1] The Final Office Action further contends that the Slater reference teaches various scenarios where an account/value card is presented to a recipient, such as an incentive/reward or as a coupon to entice purchasing. The Final Office Action takes these to be examples of gifts and therefore representative of gift card accounts.[2] The Final Office Action further states that no single, clear, and definitive definition of a "gift card" can be found in the record.[3] The Final Office Action then concludes that the Examiner has seen nothing that clearly indicates that it is unreasonable to consider the account/value card of Slater as a gift card.

The Applicant has previously submitted argumentation and evidence that the term "gift card" is a well known construct in the financial industry, and because it is a well known construct, account/value cards such as those in Slater cannot be considered "gift cards" simply because such an account/value card is presented to a recipient.[4]

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[1] Final Office Action, p. 2, ¶ 3.
[2] *Id.*
[3] *Id.*, ¶ 12.
[4] *See e.g.,* Applicant's Amendment and Response, October 1, 2008, and Exhibit Nos. 1 and 2 attached thereto ("The Many Uses of Store-Value Cards" and "A Summary of the Roundtable Discussion on Stored-Value Cards and Other Prepaid Products." )

To further bolster the Applicant's point that a "gift card" is a well known construct and that it has a particular meaning in the financial industry, the Applicant is submitting with this response a copy of H.R. 627---the "Credit Card Accountability Responsibility and Disclosure Act of 2009." Title IV of that Act specifically relates to Gift Cards.

In Section 915(a)(2)(C) of Title IV, a "store gift card" is defined as "an electronic promise, plastic card, or other payment code or device that is---

(i) redeemable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo;

(ii) issued in a specified amount, whether or not that amount may be increased in value or reloaded at the request of the holder;

(iii) purchased on a prepaid basis in exchange for payment; and

(iv) honored upon presentation by such single merchant or affiliated group of merchants for goods or services."

The Applicant respectfully submits that while the Act defines the more specific construct "store gift card," the definition put forth by the U.S. Congress in H.R. 627 applies equally well to the more generic term "gift card," and in particular parts (ii) and (iii) of Section 915(a)(2)(C).

The Applicant further respectfully submits that the definition in Section 915(a)(2)(C) specifically contradicts the contention in the Final Office Action that no single, clear, and definitive definition of a "gift card" can be found, since section 915(a)(2)(C) shows that the U.S. Congress considers the term "gift card" to have a particular meaning. As the Applicant has pointed out in prior responses, a gift card is "issued in a specified amount", and it is "purchased on a prepaid basis in exchange for payment" as defined in section 915(a)(2)(C).[5]

The Applicant further respectfully submits that the account/value card of Slater cannot reasonably be considered to be a gift card. The Final Office Action argued that since the account/value card of Slater can be given to a person as an incentive/reward or as a coupon, these are gifts and therefore representative of gift card accounts. However, this assertion simply cannot stand in light of the definition in H.R. 627, since Slater does not indicate that such incentive/rewards or coupons are "purchased on a prepaid basis in exchange for payment."

[5] *Id.,* p. 13.

Moreover, the fact that H.R. 627 specifically defines "gift card" in a manner that excludes other types of prepaid cards, credit cards and debit cards is illustrative of the fact that a "gift card" has a meaning to those of skill in the art that is different than the card in Slater.

That Slater cannot reasonably be considered to disclose a gift card is further illustrated by the fact that Slater states that a ***cardholder*** cannot deposit additional funds in an account associated with the stored value card.[6] H.R. 627, on the other hand, defines a gift card as being issued in a specified amount, and that that amount may be increased in value or reloaded at the request of the ***holder***.

The Applicant respectfully submits that the definition of a "gift card" in the Credit Card Accountability Responsibility and Disclosure Act of 2009 supports the contentions that the Applicant has put forth throughout the prosecution of this case. That is, that the term gift card has a particular meaning in the industry, and that a credit card, a debit card, or other stored value card does not become a gift card in the eyes of the financial industry merely because it is given to a recipient. This is the case at least because in such scenarios the card is not purchased for value, as defined in the Credit Card Accountability Responsibility and Disclosure Act of 2009, by either the donor or the recipient.

The Applicant respectfully submits that the claims are in a condition for allowance, and respectfully requests the withdrawal of the rejection of the claims.

*Reservation of Rights*

In the interest of clarity and brevity, Applicant may not have equally addressed every assertion made in the Office Action, however, this does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based

[6] Slater, Abstract.

upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

## CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (612) 373-6972 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on June 12, 2009.

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